

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

<b>MICHAEL SACK,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Case No. 4:23-cv-952</b>
	)	
<b>v.</b>	)	
	)	
<b>CITY OF ST. LOUIS <i>et al.</i>,</b>	)	
	)	
<b>Defendants.</b>	)	

**DEFENDANTS’ MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

COME NOW Defendants City of St. Louis, also pleaded as Tishaura Jones and Dan Isom in their official capacities (“City”), Tishaura Jones, and Dan Isom (collectively “Defendants”), by and through their attorney Sheena Hamilton, City Counselor for the City of St. Louis, pursuant to Federal Rule of Civil Procedure 12(b)(6), and for Defendants’ Motion to Dismiss Plaintiff’s Complaint (“Plaintiff’s Complaint”) state as follows:

1. Plaintiff Michael Sack (“Plaintiff or “Sack”), a white male, competed for and ultimately interviewed for a promotion to police chief on December 6 2022. Eight days later, the City selected Robert Tracy (“Tracy”), a different white male, for the position. Sack now claims he was the victim of race discrimination.

2. In addition to Plaintiff’s Title VII Claim for Race Discrimination based on an alleged failure to promote (Count I), Plaintiff asserts a 42 U.S.C. § 1981 claim based on the same alleged failure to promote (Count II), a § 1983 claim for “violation of Plaintiff’s right to equal protection” based on the same alleged failure to promote (Count III), and an unspecified conspiracy claim alleging that Defendants conspired to refuse to promote Plaintiff (Count IV).

3. Plaintiff suffered no adverse employment action or objectively meaningful harm when the search for police chief candidates continued in May of 2022.

4. Plaintiff fails to plausibly allege facts sufficient to establish his failure to promote claims because, among other reasons, the candidate promoted is the same race as Plaintiff and a member of the same protected group.

5. Plaintiff fails to state a claim under 42 U.S.C. § 1981 or 42 U.S.C. § 1983.

6. Plaintiff fails to state a “conspiracy” claim against Defendants and any such claim is barred by the intracorporate conspiracy doctrine.

7. Plaintiff’s official capacity claims against the individual defendants are duplicative and must be dismissed.

8. The individual defendants are entitled to qualified immunity and all claims against them must be dismissed.

9. A memorandum of law is filed herewith and incorporated herein by reference.

WHEREFORE, for all of the reasons set forth above, Defendants respectfully request that this honorable Court grant Defendants’ Motion to Dismiss and enter an order dismissing Plaintiff’s claims against Defendants.

Respectfully submitted,

/s/ Andrew D. Wheaton  
Andrew D. Wheaton #65269 MO  
Deputy City Counselor  
Attorney for Defendants  
City Hall, Room 314,  
St. Louis, MO 63103  
314.622.3361  
FAX: 314.622.4956  
wheatona@stlouis-mo.gov

**CERTIFICATE OF SERVICE**

I hereby certify that on October 30, 2023, the foregoing was electronically filed with the Clerk of the Court to be served by operation of the Court's electronic filing system.

/s/ Andrew D. Wheaton